

CHIEF MAGISTRATE JUDGE BRIAN A. TSUCHIDA

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,	)	No. MJ20-425
	)	
Plaintiff,	)	
	)	MEMORANDUM IN SUPPORT OF
v.	)	RELEASE
	)	
ISAIAH THOMAS WILLOUGHBY,	)	
	)	
Defendant.	)	

Isaiah Willoughby submits this memorandum to provide the Court with additional information before the July 20, 2020 detention hearing.

**I. Proposed Release Plan**

Mr. Willoughby proposes that he be released to live with his brother at the verified address in the Pretrial Services Report. His brother lives with his wife. His brother has informed defense counsel he will do all that he can to make sure Mr. Willoughby succeeds if released and he will cooperate with the Probation Department in supervising Mr. Willoughby.

Mr. Willoughby would abide by any conditions that the Court imposes, including GPS monitoring (home confinement) and any chemical dependency or mental health treatment requirements that the Court deems appropriate. He understands that any bond violations could cause him being returned to custody.

## II. Procedural History

This offense allegedly took place on June 12, 2020, during the CHOP (Capitol Hill Organized Protest) and Black Lives Matter protests in Seattle. Mr. Willoughby is accused of setting fire to a pile of debris outside of the then-abandoned SPD East Precinct, a building not made of wood or other easily flammable material. Mr. Willoughby was arrested in Tacoma at his residence on June 18, 2020. He was detained at the King County Jail.

On June 23, 2020, Mr. Willoughby was charged in King County Superior Court with Arson Second Degree (setting a fire which damages property). After about three weeks in custody, a community bail fund agreed to post bail for Mr. Willoughby on July 11, 2020.<sup>1</sup> He was released from custody, but was arrested following a misdemeanor assault allegation now charged in Seattle Municipal Court.<sup>2</sup> Mr. Willoughby was released again after posting bail for that case on Monday, July 13, 2020.

After Mr. Willoughby was released twice in state court, the Government file a federal complaint against Mr. Willoughby and obtained a warrant for his arrest on July 14, 2020. Mr. Willoughby was arrested that afternoon and had an initial appearance before this Court on July 15, 2020.

## III. Mr. Willoughby's Background and Connections to this District

Mr. Willoughby was born in Tacoma and is 35 years old. He and his four siblings spent much of their youth in foster care. They grew up without a permanent

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<sup>1</sup> The pretrial services report states that Mr. Willoughby bailed out after learning that the U.S. Attorney's Office was going to file charges against him, implying he was attempting to flee federal prosecution. The Court should not engage in such speculation. As counsel understands it, the King County Prosecutor announced, in open court during a hearing, that "the feds" will likely take the state case. The county defender sought appointment of counsel for Mr. Willoughby for the federal case. There was nothing nefarious about this common procedure.

<sup>2</sup> Just as Mr. Willoughby is presumed innocent of the offense in this case, he is also presumed innocent in that case. He denies the conduct alleged in that case.

1 home, cycling between foster parents, their birth mother, and their grandmother. Mr.  
2 Willoughby's birth mother struggled with chemical dependency, exposing the children  
3 to an environment where drug use was open. In 1997, Mr. Willoughby and his siblings  
4 were adopted, although Mr. Willoughby remains close with his birth mother and his  
5 siblings.

6 Despite his difficult childhood, Mr. Willoughby has accomplished much in life.  
7 He has no juvenile criminal history. He graduated from Franklin High School in 2003.  
8 Since then, he has worked hard to continue his education, taking community college  
9 classes on automotive repair, business, real estate, and other subjects between 2003 and  
10 2018. He completed the real estate course of study and is eligible to take the state  
11 licensing test.

12 Mr. Willoughby has been active in community engagement in the last several  
13 years. In 2019, he ran as a candidate for Seattle City Council, District 1. At candidates'  
14 forums, he spoke about homelessness, involving youth in local politics, and the  
15 importance of connecting people in the criminal justice system with services. His  
16 mission statement was "promoting healthy minds and spirits."

17 Also in 2019, Mr. Willoughby helped put on the first annual Seattle Sneaker  
18 Ball, an event hosted by Sneaker Warz, an apparel company and lifestyle brand. A  
19 portion of the proceeds from the event went to Redeeming Soles, a non-profit  
20 organization that provides footwear to men, women, and children in need. The defense  
21 team has spoken with the owner of Sneaker Warz who said that Mr. Willoughby could  
22 come back to work part-time. Like most businesses, the COVID-19 epidemic has  
23 caused economic stress for the company.

24 Mr. Willoughby also has a strong employment history outside of his work with  
25 the apparel brand and political activities. He worked at Les Schwab Tires before the  
26

1 COVID-19 caused temporary layoffs. He is eligible to return to work when the  
2 economy reopens.

#### 3 **IV. Mr. Willoughby's Criminal History**

4 The Government and Pretrial Services point to Mr. Willoughby's criminal  
5 history as a reason for detention. The Stanford Center on Poverty and Inequality found  
6 that, by the end of 2015, the rate of incarceration for Black men ages 20-34 was 5.7  
7 times the rate of incarceration for similarly aged white men.<sup>3</sup> Mr. Willoughby is not a  
8 stranger to the carceral system's disproportionate impact on Black men. His record, as  
9 set forth in the Pretrial Services Report, consists primarily of misdemeanor convictions,  
10 and his two felony convictions are non-violent offenses. The felony convictions include  
11 a 2007 Trafficking in Stolen Property conviction, for which he was sentenced to work-  
12 release and community service, and a Theft First Degree conviction, which consisted of  
13 a shoplifting offense at a grocery store during which he had an altercation with an  
14 employee. For the latter offense, he was sentenced to 59 days of custody. The rest of  
15 Mr. Willoughby's record includes misdemeanor convictions dating to 2005. More than  
16 half of the charges in the pretrial services report were dismissed. While he has several  
17 assault convictions, most are fairly dated, having occurred between 2005 and 2010. The  
18 most recent assault conviction took place in 2016.

19 Pretrial Services notes that Mr. Willoughby has pending warrants in several  
20 cases, but the jurisdictions that issued those warrants did not place detainers for him  
21 when he was recently in the King County Jail. And those cases appear to involve  
22 shoplifting-type allegations, because they are charged as theft in the third degree.

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26 <sup>3</sup> Available at  
[https://inequality.stanford.edu/sites/default/files/Pathways\\_SOTU\\_2017\\_incarceration.pdf](https://inequality.stanford.edu/sites/default/files/Pathways_SOTU_2017_incarceration.pdf)

1       **V.     The Bail Reform Act**

2       The Bail Reform Act (BRA) provides for release of a person upon a “any  
3 condition or combination of conditions” if those conditions “will reasonably assure the  
4 appearance of such person as required and the safety of any other person and the  
5 community.” 18 U.S.C. § 3142(f). The statute thus presumes release absent a judicial  
6 finding that no conditions exist that will reasonably assure the twin goals it describes. It  
7 does not require certain or near-certain assurance of appearance and community  
8 safety—just that the conditions will provide reasonable assurance. In this way, the  
9 statute balances the judicial process, community safety, and the presumption of  
10 innocence by avoiding unnecessary detention of people presumed innocent.  
11 The BRA provides for a rebuttable presumption of detention only where a person is  
12 accused of committing a small subset of statutes. 18 U.S.C. § 3142(e). This case does  
13 not fall into that subset and no presumption of detention applies here. *Id.*

14       The Government will likely emphasize the serious nature of the charge by  
15 reiterating the mandatory minimum penalty. Nothing about the charge dictates that Mr.  
16 Willoughby be detained, however—neither the penalties he faces, nor the facts as the  
17 Government alleges them. Congress did not include the offense in BRA’s list of  
18 rebuttable presumption offenses. It could have but chose not to.

19       And as Exhibit A to the defense’s memorandum for the detention review hearing  
20 demonstrates, courts have seen fit to release people facing the same charges stemming  
21 from incidents involving more aggravated attacks (such as cases involving use of  
22 Molotov cocktails.) While each detention assessment is individualized, these cases  
23 reflect the reality that arson cases arising out of the protests do not present unmitigable  
24 risk of flight or danger.

1       **VI. Conclusion**

2       Rather than using the resources of the federal government to fill voids in local  
3 investigations, such as investigating police misconduct in response to BLM protests, the  
4 federal government has chosen to simply step into a case already investigated and  
5 charged in state court. The federal government is simply using the cudgel of federal  
6 mandatory minimum sentences to detain and imprison certain protestors. Whereas Mr.  
7 Willoughby was facing a standard range sentence of 12-14 months in state court for  
8 Arson Second Degree, the Government will now argue that he should be detained  
9 because he faces a draconian federal mandatory minimum term. This Court should  
10 resist such arguments and faithfully apply the standards in the Bail Reform Act that  
11 presume release on bond, reserving detention for only rare cases.

12       Release is also warranted in light of the COVID-19 epidemic. As the Court  
13 knows, inmates cannot maintain social distancing at the FDC Seatac and jails are  
14 susceptible to viral outbreaks. In light of the safety precautions taken at the FDC  
15 Seatac, it is difficult for counsel to communicate with detained clients. If released, Mr.  
16 Willoughby can shelter at this brother's home while also communicate with counsel.

17       Release is warranted, despite the allegations. Therefore, Mr. Willoughby  
18 respectfully requests that the Court release him on an appearance bond with pretrial  
19 supervision and conditions.

20       DATED this 17<sup>th</sup> day of July 2020.

21                               Respectfully submitted,

22                               *s/ Dennis Carroll*

23                               Assistant Federal Public Defender  
24                               Attorney for Isaiah Willoughby